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10/667,755	09/22/2003	Lee M. Amitis	03-6164	1374
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INNOVATION DIVISION CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022			EXAMINER	ARAQUE JR, GERARDO
ART UNIT		PAPER NUMBER		3689
NOTIFICATION DATE		DELIVERY MODE		
01/06/2012		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocketing@cantor.com  
dpostolski@cantor.com  
lalto@cantor.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/667,755	<b>Applicant(s)</b> AMAITIS ET AL.
	<b>Examiner</b> GERARDO ARAQUE JR	<b>Art Unit</b> 3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 December 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 5) Claim(s) 1,2,15,16 and 24-69 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 6) Claim(s) \_\_\_\_\_ is/are allowed.
- 7) Claim(s) 1,2,15,16 and 24-69 is/are rejected.
- 8) Claim(s) \_\_\_\_\_ is/are objected to.
- 9) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/GB-06)  
 Paper No(s)/Mail Date 12/17/2009; 1/21/2010; 9/13/2010
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date: \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **12/14/2009** has been entered.

### ***Status of Claims***

2. **Claims 1, 2, 15, and 16** have been **amended**.
3. **Claims 2 – 14 and 17 – 23** have been **cancelled**.
4. **Claims 24 – 69** are **new**.

### ***Information Disclosure Statement***

1. The information disclosure statement filed **9/13/2010** fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, the reference listed as Film Finances, Inc.
2. The information disclosure statement filed **9/13/2010** fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications,

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applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered. Specifically, the Examiner asserts a plurality of references, approximately 12 non-patent literature documents were submitted, but were either not properly listed or not listed at all in the IDS. Additionally, a plurality of patent specifications/applications were submitted, but were not labeled with their serial number. Although those references were considered, there were only considered because they are readily accessible in the USPTO system. However, any further submissions of patent applications, documents, and etc. must be clearly labeled or identified in order to properly match up with those documents listed in the IDS.

3. The information disclosure statement filed **12/17/2009** fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a

column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered. Specifically, the Examiner asserts a plurality of references, approximately 5 non-patent literature documents were submitted, but were either not properly listed or not listed at all in the IDS. Additionally, a plurality of patent specifications/applications were submitted, but were not labeled with their serial number. Although those references were considered, there were only considered because they are readily accessible in the USPTO system. However, any further submissions of patent applications, documents, and etc. must be clearly labeled or identified in order to properly match up with those documents listed in the IDS.

4. The information disclosure statement filed **9/13/2010** fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, the Clark, Deborah P. reference does not match up with the submitted document number of 5,113,423, the international preliminary reports, and the notification of transmittal of the International Search Report and Written Opinions.
5. The information disclosure statement filed **12/17/2009** fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document;

each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specifically, the KR2002042036 reference was not provided, the Geiger reference does not match up with the document number of 6,263,900, and a copy of the notification of the International Search Report and Written Opinion, Notification of the Transmittal of the International Search Report and Opinion, and Preliminary Examination Report were not provided.

6. In summary the Examiner asserts that if the applicant wishes for the IDS and any submitted documents to be considered, it is requested that the applicant submit all documents that are listed in the IDS, ensure that all documents that are submitted to be listed in the IDS, properly label/identify the documents, and explain the relevance of the listed documents. Additionally, the Examiner notes that it is not necessary to provide the full case or prosecution history of an application. Specifically, it is not necessary to provide every single office action, notice of allowance, miscellaneous paperwork, and the patent or PGPub, if applicable. For example, it is not necessary to submit copies of PGpubs or patents and that simply listing the number in the IDS is sufficient. It is also not necessary to submit the full prosecution history of the application as well. Moreover, the Examiner also requests for the submission of the IDS and documents to be consistent. That is to say, it is requested that the if documents are to be submitted to make sure that they are listed in the IDS and to not simply list some of the documents in the IDS and vice versa.

***Claim Rejections - 35 USC § 112, first paragraph***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 27, 28, 29, 30, 32, 33, 50, 51, 52, 53, 55, and 56** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner asserts that the specification, as originally filed, does not provide adequate support for a third and fourth bet or that the third and fourth bet lock in a gain or loss associated with at least one corresponding first and second bet, respectively, of the plurality of first and second bets.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 26, 27, 31, 32, 33, 49, 50, 54, 55, 56** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Examiner asserts that the language, "...excluding the one or more horse races that have occurred...." is awkward and fails to establish the time line or reference point in which the claim is attempting to disclose. The Examiner suggests

using the language found on Page 11 Lines 9 – 11 of the specification, specifically, "...a bet regarding the total number of units ***that will be earned by the participant in each of the remaining events.***" In other words, the Examiner suggests that the language used in the specification makes it much clearer as to what the payout is based on and clearly establishes which games are used for determining the payout.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. **Claim 1, 15, 24 – 28, 31 – 51, and 54 – 69** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Downes (US Patent 6,910,965 B2)** in view of **The New York Times**

(http://query.nytimes.com/gst/fullpage.html?res=9F03E0D81139F93AA15752C0A9659C8B63&partner=rssnyt&emc=rss &  
http://query.nytimes.com/gst/fullpage.html?res=950DE7D81F31F936A15755C0A96F948260) in further view of **Friedman (US Patent 6,126,543)**.

5. In regards to **claims 1 and 15, Downes** discloses a method and an apparatus, comprising:

**(Claim 15) at least one processor (Figure 1 wherein the method is a computer implemented method); and**

**(Claim 15) memory storing computer instructions that, when executed by the at least one processor (Figure 1 wherein the method is a computer implemented method), cause the at least one processor to:**

receiving, by at least one processor of a computer, a first bet at a first quote (Col. 2 Lines 45 – 47; Col. 4 Lines 49 – 50; Col. 7 – 8 Lines 50 – 18; Col. 12 Lines 19 – 41; wherein a bet includes a quote that is going to be placed on a participant);

receiving, by the at least one processor, results of each of the plurality of events, the results comprising the positioning of the particular participant in each of the plurality of events (Claim 7 – 9 Lines 50 – 13; Claim 1 Part E wherein participants of an event have an associated position in the event; see Col. 14 Lines 13 – 46 regarding time-based events);

determining, by the at least one processor, an amount of a payout for the first bet based at least in part on the first quote and the positioning of the participant in the plurality of events (Col. 6 Lines 43 – 46; Col. 7 – 10 Lines 50 – 50; Col. 12 Lines 42 – 59; Col. 18 Lines 16 – 37 wherein the amount of the payout is based on the first quote and the positioning earned by the participant in the plurality of events.).

**Downes** discloses all of the limitations above and further discloses that the method and system can be used for auto racing (**Claim 12**) and horse racing (**Col. 2 Lines 1 – 2**) and that pari-mutuel wagering is old and well known to be used for horse racing. **Downes** further teaches that the system tracks the participants performance, i.e. positioning in the event, for the event(s) and that the wager and its payout is based on the participants performance. However, **Downes** fails to explicitly disclose:

receiving, by at least one processor of a computer, a first bet at a first quote, the first bet having an associated first unit stake, ***the first quote corresponding with the total number of units potentially earned by a participant in a plurality of events;*** and

for each of the plurality of events, determining, by the at least one processor, a number of units earned by the participant based at least in part on the positioning of the participant in the event and a purse distribution structure defining a distribution of a purse over a plurality of positions in the event.

Despite this, **Downes** does disclose that a participant's ranking is tracked and that the bet made by the user is based on the participant's ranking. With that said, **The New York Times** discloses that it is old and well known for auto racing and horse racing to have a purse distribution system. The purse distribution system is a system where a substantial amount of money (**purse**) is distributed among the participants of a sporting event, such as Nascar and the Super Derby, based on the placing of each participant in the event. It is further disclosed that the purse distribution system is a system where a participant's reward is based on their placing in an event. As a result, one of ordinary skill in the art of gambling would have found it obvious that the system and method disclosed by **Downes** would obviously include a purse distribution system for sporting events, such as auto racing and horse racing, and that the participant's placing in the event(s) corresponds to the amount of units earned by the participant.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention in view of the teachings of **New York Times** for **Downes's**

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sports wagering system to have obviously included a purse distribution structure, which is based on the placing of a participant.

The **combination of Downes and New York Times** discloses that in the art of wagering it is old and well known to use a purse distribution structure as a means of determining the amount of units awarded to participants in an event and further discloses that it is well known in the art to carryout and manage bets in a computer environment. The **combination** further discloses that it is well known to receive bets from users of the system and that the bets are associated with participant rankings for the event. The **combination** further teaches the concept of using a point spread, i.e. spread betting, which is old and well known in the art of gambling. However, the **combination** fails to go into the particulars that make up spread betting. To be more specific, the **combination** fails to explicitly disclose the specific type of spread betting that is being used, i.e. over/under spread betting.

Specifically, the **combination of Downes and New York Times** fails to explicitly disclose:

receiving, by at least one processor of a computer, a first bet at a first quote, the first bet **having an associated first unit stake**;

determining, by the at least one processor, an amount of a payout for the first bet **based at least in part on the first unit stake, the first quote, and the total number of units** earned by the participant in the plurality of events.

However, the **combination of Downes and New York Times** does disclose a purse distribution system that is based on a participant's ranking and that the spread

methodology is well known in the art of gambling (see **Downes Col. 1 Lines 46 – 60; Col. 2 Lines 45 – 56**). In other words, the **combination** discloses that it is well known in the art of gambling to use a spread betting system. In view of this, the Examiner points to **Friedman** which discloses that in the art of spread betting it is well known to use the over/under betting system in conjunction with the point spread methodology (**Col. 1 Lines 66 – 6; Col. 3 Lines 36 – 51; Col. 6 Lines 4 – 17, 46 – 67**) as a means of calculating the user's payout. Consequently, one of ordinary skill in the art of gambling would have found it obvious that in using the over/under betting methodology that a unit stake is being used, wherein, as defined by the applicant's specification, the unit stake is:

"the amount per unit (such as per point or per dollar, for example) above or below the quote that the client 20 placing the index bet 80 wishes to wager. For example, suppose in a spread betting format that a client 20 places an index bet 80 for a unit stake of \$2 per point that a particular jockey will score more than 172 points (the quote) over a series of eight races. If the jockey scores 190 points, the client 20 would win \$36, or (190 points-172 points)\*(42/point). However, if the jockey scores only 162 points, the client 20 would lose \$20, or (172-162)\*(\$2/point)."

**(see Pages 6 – 7 Lines 20 – 7 of the applicant's specification)**

As a result, the Examiner asserts that one of ordinary skill in the art in view of **Friedman** would have found it obvious for the payout to be based *at least in part on* the first unit stake, the first quote, and the total number of units earned by the participants and because spread betting is being used it would have further been obvious that a unit stake is being associated with the bet in order to determine how much the winner is supposed to receive.

Therefore, it would have been obvious to one of ordinary skill in the art of gambling at the time of the invention in view of the teachings of **Downes and New York Times**, which discloses the use of a spread betting methodology in a purse distribution system, to have included an over/under methodology, as taught by **Friedman**, since this feature is an old and well known concept that is used in gambling that involves spread betting and would provide an alternate, but obvious means, of determining a user's payout. Additionally, one of ordinary skill in the art of gambling would have further found it obvious that a unit stake must be established in a spread betting environment in order to establish or determine what constitutes a winner and to also determine the amount of payout a user is supposed to receive.

7. In regards to **claims 24, 25, 47, and 48**, **Downes** discloses a method, comprising:

determining, by at least one processor of a computer, a spread quote comprising an upper index number and a lower index number, wherein the upper index number and the lower index number are associated with a particular jockey's performance or placing in a plurality of horse races (**Col. 1 Lines 46 – 60; Col. 2 Lines 45 – 56 wherein a spread betting system that includes the point spread methodology is disclosed, which includes an upper and lower index number in order to establish winners; Col. 6 Lines 43 – 46; Col. 7 – 10 Lines 50 – 50; Col. 12 Lines 42 – 59; Col. 18 Lines 16 – 37 wherein the amount of the payout is based on the first quote and the positioning earned by the participant in the plurality of events;**);

causing, by the at least one processor, information regarding index bets based on the spread quote to be communicated (**Figure 1 wherein the method is a computer implemented method that allows for the information associated with the bet to be communicated to other systems**), wherein the index bet comprise:

a bet, wherein the bet is associated and performed using a point spread methodology that includes an upper and lower limit which is further associated with a particular jockey's performance or placing (**Col. 2 Lines 45 – 47; Col. 4 Lines 49 – 50; Col. 7 – 8 Lines 50 – 18; Col. 12 Lines 19 – 41; wherein a bet includes a quote that is going to be placed on a participant; Claim 7 – 9 Lines 50 – 13; Claim 1 Part E wherein participants of an event have an associated position in the event; see Col. 14 Lines 13 – 46 regarding time-based events**);

for each horse race, of the plurality of horses races, in which the particular jockey participated, receiving, by the at least one processor, a respective result of the horse race, the respective result comprising a respective final position of the particular jockey in the horse race (**Claim 7 – 9 Lines 50 – 13; Claim 1 Part E wherein participants of an event have an associated position in the event; see Col. 14 Lines 13 – 46 regarding time-based events**);

determining, by the at least one processor, whether the one or more first bets are winning bets based on at least in part on whether the performance or placing by the particular jockey in the plurality of horse races is greater than the upper index number (**Col. 6 Lines 43 – 46; Col. 7 – 10 Lines 50 – 50; Col. 12 Lines 42 – 59; Col. 18 Lines**

**16 – 37 wherein the amount of the payout is based on the first quote and the positioning earned by the participant in the plurality of events); and**

determining, by the at least one processor, for each first bet of the one or more first bets, a respective amount of a payout for the first bet (**Col. 6 Lines 43 – 46; Col. 7 – 10 Lines 50 – 50; Col. 12 Lines 42 – 59; Col. 18 Lines 16 – 37 wherein the amount of the payout is based on the first quote and the positioning earned by the participant in the plurality of events).**

**Downes** discloses all of the limitations above and further discloses that the method and system can be used for auto racing (**Claim 12**) and horse racing (**Col. 2 Lines 1 – 2**) and that pari-mutuel wagering is old and well known to be used for horse racing. **Downes** further teaches that the system tracks the participants performance, i.e. positioning in the event, for the event(s) and that the wager and its payout is based on the participants performance. However, **Downes** fails to explicitly disclose:

determining, by at least one processor of a computer, a spread quote comprising an upper index number and a lower index number, wherein the upper index number and the lower index number **are associated with a total number of units that could be earned** by a particular jockey in a plurality of horse races;

determining, by the at least one processor, the **total number of units earned by the particular jockey in the plurality of horse races**, wherein determining the total number of units comprises:

for each horse race, of the plurality of horse races, in which the particular jockey participated, determining, by the at least one processor, **a respective**

*number of units earned by the particular jockey in the horse race* based at least in part on *at least one of:*

*the respective final position of the particular jockey in the horse race, and*

*a respective unit distribution structure defining a distribution of units over a respective plurality of positions in the horse race;*

determining, by the at least one processor, whether the one or more first bets are winning bets based on at least in part on whether *the total number of units earned* by the particular jockey in the plurality of horse races is greater than the upper index number.

Despite this, **Downes** does disclose that a participant's ranking is tracked and that the bet made by the user is based on the participant's ranking. With that said, **The New York Times** discloses that it is old and well known for auto racing and horse racing to have a purse distribution system. The purse distribution system is a system where a substantial amount of money (**purse**) is distributed among the participants of a sporting event, such as Nascar and the Super Derby, based on the placing of each participant in the event. It is further disclosed that the purse distribution system is a system where a participant's reward is based on their placing in an event. As a result, one of ordinary skill in the art of gambling would have found it obvious that the system and method disclosed by **Downes** would obviously include a purse distribution system for sporting events, such as auto racing and horse racing, and that the participant's placing in the event(s) corresponds to the amount of units earned by the participant.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention in view of the teachings of **New York Times** for Downes's sports wagering system to have obviously included a purse distribution structure, which is based on the placing of a participant.

The **combination of Downes and New York Times** discloses that in the art of wagering it is old and well known to use a purse distribution structure as a means of determining the amount of units awarded to participants in an event and further discloses that it is well known in the art to carryout and manage bets in a computer environment. The **combination** further discloses that it is well known to receive bets from users of the system and that the bets are associated with participant rankings for the event. The **combination** further teaches the concept of using a point spread, i.e. spread betting, which is old and well known in the art of gambling. However, the **combination** fails to go into the particulars that make up spread betting. To be more specific, the **combination** fails to explicitly disclose the specific type of spread betting that is being used, i.e. over/under spread betting.

Specifically, the **combination of Downes and New York Times** fails to explicitly disclose:

determining, by at least one processor of a computer, *a spread quote comprising an upper index number and a lower index number, wherein the upper index number and the lower index number* are associated with a total number of units that could be earned by a particular jockey in a plurality of horse races;

causing, by the at least one processor, information regarding index bets based on the spread quote to be communicated, wherein the index bets comprise:

a first type of bet, wherein the first type of bet comprises an ***over bet*** that a total number of units earned by the particular jockey in the plurality of horse races will be greater than the upper index number; and

a second type of bet, wherein the second type of bet comprises ***an under bet*** that the total number of units earned by the particular jockey in the plurality of horse races will be less than lower index number;

receiving, by the at least one processor, one or more first bets at the upper index number, ***wherein each first bet of the one or more first bets has a respective associated first unit stake and each first bet of the one or more first bets comprises the first type of bet;***

receiving, by the at least one processor, one or more second bets at the lower index number, ***wherein each second bet of the one or more second bets has a respective associated second unit stake and each second bet of the one or more second bets comprises the second type of bet;***

determining, by the at least one processor, whether the one or more first bets are winning bets based on at least in part on whether the total number of units earned by the particular jockey in the plurality of horse races is ***greater than the upper index number;*** and

determining, by the at least one processor, for each first bet of the one or more first bets, a respective amount of a payout for the first bet, *wherein determining the respective amount of the payout for the first bet comprises:*

*multiplying, by the at least one processor, the respective associated first unit stake of the first bet by a difference between the total number of units earned by the particular jockey in the plurality of horse races and the upper index number;*

(Claims 25 and 48) determining, by the at least one processor, whether the one or more second bets are winning bets based on at least in part on whether the total number of units earned by the particular jockey in the plurality of horse races is *less than the lower index number*; and

(Claims 25 and 48) determining, by the at least one processor, for each second bet of the one or more second bets, a respective amount of a payout for the second bet, *wherein determining the respective amount of the payout for the second bet comprises:*

*(Claims 25 and 48) multiplying, by the at least one processor, the respective associated second unit stake by a difference between the lower index number and the total number of units earned by the particular jockey in the plurality of horse races.*

However, the **combination of Downes and New York Times** does disclose a purse distribution system that is based on a participant's ranking and that the spread methodology is well known in the art of gambling (see Downes Col. 1 Lines 46 – 60;

**Col. 2 Lines 45 – 56).** In other words, the **combination** discloses that it is well known in the art of gambling to use a spread betting system. In view of this, the Examiner points to **Friedman** which discloses that in the art of spread betting it is well known to use the over/under betting system in conjunction with the point spread methodology (**Col. 1 Lines 66 – 6; Col. 3 Lines 36 – 51; Col. 6 Lines 4 – 17, 46 – 67**) as a means of calculating the user's payout. Consequently, one of ordinary skill in the art of gambling would have found it obvious that in using the over/under betting methodology that a unit stake is being used, wherein, as defined by the applicant's specification, the unit stake is:

"the amount per unit (such as per point or per dollar, for example) above or below the quote that the client 20 placing the index bet 80 wishes to wager. For example, suppose in a spread betting format that a client 20 places an index bet 80 for a unit stake of \$2 per point that a particular jockey will score more than 172 points (the quote) over a series of eight races. If the jockey scores 190 points, the client 20 would win \$36, or (190 points-172 points)\*(42/point). However, if the jockey scores only 162 points, the client 20 would lose \$20, or (172-162)\*(\$2/point)."

**(see Pages 6 – 7 Lines 20 – 7 of the applicant's specification)**

As a result, the Examiner asserts that one of ordinary skill in the art in view of **Friedman** would have found it obvious for the payout to be based *at least in part on* the first unit stake, the first quote, and the total number of units earned by the participants and because spread betting is being used it would have further been obvious that a unit stake is being associated with the bet in order to determine how much the winner is supposed to receive. More specifically, one of ordinary skill in the art of gambling would have found it obvious that when dealing with a spread betting system that uses the point spread and over/under methodology that an upper index and

a lower index is being used in order to determine winners and that the payout is based on how far or how many points are in between an actual value and what vale a user gambled/guessed on and the amount of the payout would be equal to how much a user decided to gamble on for each point from the actual value, wherein the payout can be a win or a loss based on the comparison that is made between the final score/placing/etc. and the user's wager.

Therefore, it would have been obvious to one of ordinary skill in the art of gambling at the time of the invention in view of the teachings of **Downes and New York Times**, which discloses the use of a spread betting methodology in a purse distribution system, to have included an over/under methodology, as taught by **Friedman**, since this feature is an old and well known concept that is used in gambling that involves spread betting and would provide an alternate, but obvious means, of determining a user's payout. Additionally, one of ordinary skill in the art of gambling would have further found it obvious that a unit stake must be established in a spread betting environment in order to establish or determine what constitutes a winner and to also determine the amount of payout a user is supposed to receive.

8. In regards to **claims 26, 27, 49, and 50, the combination of Downes, New York Times, and Friedman** discloses further comprising:

(**Claims 26 and 49**) after one or more horse races of the plurality of horse races have occurred,

determining, by the at least one processor, a second spread quote comprising a second upper index number and a second lower index number, wherein the second

upper index number and the second lower index number are associated with a total number of units that could be earned by the particular jockey in the plurality of horse races excluding the one or more horse races that have occurred; and

**(Claims 27 and 50)** after the one or more horse races of the plurality of horse races have occurred,

causing, by the at least one processor, additional index bets based on the second spread quote to be offered to bettors, wherein the additional index bets comprise:

a third type of bet, wherein the third type of bet comprises an over bet that a total number of units earned by the particular jockey in the plurality of horse races excluding the one or more horse races that have occurred will be greater than or equal to the second upper index number; and

a fourth type of bet, wherein the fourth type of bet comprises an under bet that the total number of units earned by the particular jockey in the plurality of horse races excluding the one or more horse races that have occurred will be less than or equal to the second lower index number.

**(The Examiner asserts that the claim is directed towards merely repeating the steps of the method again for another race, wherein the claim is broad enough to encompass another race of the same season/type or another race for a completely different sport. With that said, the Examiner points to Downes Col. 14 Lines 13 – 64 regarding time-based games and the associated gambling that is based on the particular sports season. In other words, Downes discloses that**

**sports gambling can be carried out over the course of the season, which would obviously result in multiple bets being carried out for each game in the season, which would obviously include gambling on games that are being carried out later in the season regardless of whether or not bets were made on previous games of the same season. Moreover, as discussed in the rejection above, the combination of Downes, New York Times, and Friedman discloses that in the art of gambling it is old and well known to use spread betting, which further includes point spread and over/under betting, and that multiple betting types can be used in combination, which would result in multiple bet types being used for a given wager for a given game.)**

9. In regards to **claims 28 and 51**, the **combination of Downes, New York Times, and Friedman** discloses further comprising: receiving, by the at least one processor, one or more third bets at the second upper index number, wherein each third bet of the one or more third bets has a respective associated third unit stake and each third bet of the one or more third bets comprises the third type of bet; and receiving, by the at least one processor, one or more fourth bets at the second lower index number, wherein each fourth bet of the one or more fourth bets has a respective associated fourth unit stake and each fourth bet of the one or more fourth bets comprises the fourth type of bet (**As already discussed above, the Examiner asserts that the claim is merely repeating the steps of the method above for the first and second bet.** As a result, the Examiner asserts that because the combination of the prior art discloses that multiple bets can be carried out and because multiple bet types can be used for a

**particular game then it would have been obvious to one of ordinary skill in the art that a wager for another game, such as another game for the same season, to include additional bet types that would include an upper and lower value when using the combination of point spread and over/under betting.).**

10. In regards to **claims 31 and 54, the combination of Downes, New York Times, and Friedman** discloses further comprising: determining, by the at least one processor, the total number of units earned by the particular jockey in the plurality of horse races excluding the one or more horse races that have occurred (**Col. 10 Lines 51 – 60; Col. 12 Lines 60 – 67; Col. 14 Lines 13 – 64 wherein the gambler can view statistical information of a participant over the course of a season and wherein the bet would obviously be based on the performance of the participant based on the statistical information gathered about the participant.** Downes further discloses that sports gambling can be carried out over the course of the season, which would obviously result in multiple bets being carried out for each game in the season, which would obviously include gambling on games that are being carried out later in the season regardless of whether or not bets were made on previous games of the same season.).

11. In regards to **claims 32, 33, 55, and 56, the combination of Downes, New York Times, and Friedman** discloses further comprising:

**(Claims 32 and 55) determining, by the at least one processor, for each third bet of the one or more third bets, a respective amount of a payout for the third bet, wherein determining the respective amount of the payout for the third bet comprises: multiplying,**

by the at least one processor, the respective associated third unit stake of the third bet by a difference between the total number of units earned by the particular jockey in the plurality of horse races excluding the one or more horse races that have occurred and the second upper index number; and

**(Claims 33 and 56)** determining, by the at least one processor, for each fourth bet of the one or more fourth bets, a respective amount of a payout for the fourth bet, wherein determining the respective amount of the payout for the fourth bet comprises: multiplying, by the at least one processor, the respective associated fourth unit stake of the fourth bet by a difference between the second lower index number and the total number of units earned by the particular jockey in the plurality of horse races excluding the one or more horse races that have occurred.

**(As already discussed above, the claims are merely repeating steps for additional bets that are being made. That is to say, the steps that were performed for the first and second bet in order to determine the payout are the same steps that are being carried out for the additional bets that are being made, i.e. the third and fourth bets. As a result, the Examiner asserts that one of ordinary skill in the art of gambling would have found it obvious that if the same gambling and payout methodology is being used, i.e. using the point spread and over/under system, for any additional bets that the same steps in order to determine the payout would obviously be the same as well. Downes further discloses that sports gambling can be carried out over the course of the season, which would obviously result in multiple bets being carried out for each game in the season,**

**which would obviously include gambling on games that are being carried out later in the season regardless of whether or not bets were made on previous games of the same season.)**

12. In regards to **claims 34 and 57**, the **combination of Downes, New York Times, and Friedman** discloses further comprising: after one or more horse races of the plurality of horse races have occurred, receiving, by the at least one processor, a request to settle a second bet of the one or more second bets; and determining, by the at least one processor, an amount of a settlement payment for the second bet based at least in part on at least one of: the respective associated second unit stake of the second bet, and the respective final position of the particular jockey in the one or more horse races of the plurality of horse races that have occurred and in which the particular jockey participated; causing, by the at least one processor, the settlement payment to be paid; and canceling, by the at least one processor, the second bet (**obviously included in that at bettors must be paid after a race has concluded and, based on the teachings of the prior art, the payout is based on the type of bet made, the quantity of the bet, and the placing of the participant.** For example, Downes discloses that the steps of the method comprise the establishment of a wagering account, placing wagers, and collecting winning wagers and account funds – see Col. 12 Lines 4 – 59. Further still, it would have also been obvious that once the bet has been settled or fulfilled that the bet would be cancelled in order to avoid a repeated payout or loss, i.e. duplicating or re-fulfilling a bet that is no longer valid.).

13. In regards to **claims 35 and 58**, the combination of Downes, New York Times, and Friedman discloses wherein the information regarding the index bets comprises *at least one of*: the upper index number; the lower index number; bet rules; a running total of units earned by the particular jockey in any horse races of the plurality of horse races that have occurred; odds; and payouts (see Downes Col. 1 Lines 46 – 60; Col. 2 Lines 45 – 56 wherein a spread betting system that includes the point spread methodology is disclosed, which includes an upper and lower index number in order to establish winners; Col. 10 Lines 51 – 60; Col. 12 Lines 60 – 67; Col. 14 Lines 13 – 64 wherein the gambler can view statistical information of a participant over the course of a season and wherein the bet would obviously be based on the performance of the participant based on the statistical information gathered about the participant; Col. 12 Lines 4 – 59 regarding payout; Col. 2 Lines 45 – 56 regarding odds; New York Times regarding a purse distribution structure that would include the total units earned by a particular jockey).

14. In regards to **claims 36 and 59**, the combination of Downes, New York Times, and Friedman discloses wherein the information regarding the index bets comprises current bet data (**obviously included in that the gambler is placing a bet on a current game and wherein the payout is provided once the game is over.** In other words, it is obvious that the index bet to be comprised of current bet data in order to carry out the invention appropriately and legally. That is to say, the wager is invalid if the current bet is comprised of bets that have already occurred or been fulfilled on past games.).

15. In regards to **claims 37 and 60, the combination of Downes, New York Times, and Friedman** discloses wherein causing the information regarding the index bets to be communicated comprises: causing, by the at least one processor, the information to be communicated to one or more interfaces (**Downes – Figure 1 wherein the method is a computer implemented method that allows for the information associated with the bet to be communicated to other systems**).

16. In regards to **claims 38 and 61, the combination of Downes, New York Times, and Friedman** discloses wherein causing the information regarding the index bets to be communicated comprises: causing, by the at least one processor, the index bets based on the spread quote to be offered to bettors (**Downes Figure 1; Col. 12 Lines 4 – 59 and obviously included in that bettors would be unable to make a bet unless information regarding the particular game/race is provided to the bettors. In other words, it would have been obvious based on the teachings of Downes, which also discloses that statistical information and game/race information is being provided to gamblers, that the index bets to be communicated to the bettors in order for the bettors to understand the point spread and, when taken in view of the teachings of Friedman, to also recognize the over/under for the game/race.**).

17. In regards to **claims 39 and 62, the combination of Downes, New York Times, and Friedman** discloses wherein causing the information regarding the index bets to be communicated comprises: causing, by the at least one processor, the information to be

displayed (**Downes – Figure 1** wherein the information is being communicated and displayed on the computing devices).

18. In regards to **claims 40 and 63**, the **combination of Downes, New York Times, and Friedman** discloses wherein the particular jockey does not participate in every horse race of the plurality of horse races (**Downes – Col. 14 Lines 28 – 36** wherein byes are well known in the art of sports. Although Downes only discloses the specific example of Football, one of ordinary skill in the art of sports would have found it obvious, if not well known, that the concept of bye weeks/games are extended to other sport types.).

19. In regards to **claims 41 and 64**, the **combination of Downes, New York Times, and Friedman** discloses wherein determining the total number of units earned by the particular jockey comprises: determining, by at least one processor, an amount of money earned by the particular jockey in the plurality of horse races (**New York Times – The New York Times discloses that it is old and well known for auto racing and horse racing to have a purse distribution system. The purse distribution system is a system where a substantial amount of money (purse) is distributed among the participants of a sporting event, such as Nascar and the Super Derby, based on the placing of each participant in the event. It is further disclosed that the purse distribution system is a system where a participant's reward is based on their placing in an event.**).

20. In regards to **claims 42 and 65**, the **combination of Downes, New York Times, and Friedman** discloses wherein for each horse race, of the plurality of horse races, in

which the particular jockey participated, the respective unit distribution structure of the horse race comprises a purse distribution structure defining a distribution of a purse over the respective plurality of positions in the horse race (**The New York Times discloses that it is old and well known for auto racing and horse racing to have a purse distribution system. The purse distribution system is a system where a substantial amount of money (purse) is distributed among the participants of a sporting event, such as Nascar and the Super Derby, based on the placing of each participant in the event. It is further disclosed that the purse distribution system is a system where a participant's reward is based on their placing in an event, which includes a plurality of games/races for the event/season.**).

21. In regards to **claims 43 and 66, the combination of Downes, New York Times, and Friedman discloses wherein the plurality of horse races occur over an extended period of time (Downes – Col 14 Lines 13 – 36 wherein the sport occurs over an extended period of time and wherein one of ordinary skill in the art of horse racing would have also found that horse racing is carried out over an extended period of time).**

22. In regards to **claims 44 and 67, the combination of Downes, New York Times, and Friedman discloses wherein the plurality of horse races occur over a period of time greater than one week (Downes – Col 14 Lines 13 – 36 wherein the sport occurs over a period of time greater than one week and wherein one of ordinary skill in the art of horse racing would have also found that horse racing is carried out over a time greater than one week).**

23. In regards to **claims 45 and 68, the combination of Downes, New York Times, and Friedman** discloses wherein the over bet of the first type of bet is that the total number of units earned by the particular jockey in the plurality of horse races will be greater than or equal to the upper index number (**obviously included, if not inherently included, in that this is the definition or system used in the over/under methodology**).

24. In regards to **claims 46 and 69, the combination of Downes, New York Times, and Friedman** discloses wherein the under bet of the second type of bet is that the total number of units earned by the particular jockey in the plurality of horse races will be less than or equal to the lower index number (**obviously included, if not inherently included, in that this is the definition or system used in the over/under methodology**).

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25. **Claims 2, 16, 29, 30, 52, and 53** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Downes (US Patent 6,910,965 B2)** in view of **The New York Times** (<http://query.nytimes.com/gst/fullpage.html?res=9F03E0D81139F93AA15752C0A9659C8B63&partner=rssnyt&emc=rss> & <http://query.nytimes.com/gst/fullpage.html?res=950DE7D81F31F936A15755C0A96F948260>) in view of **Friedman (US Patent 6,126,543)** and in further view of **Official Notice**.

26. In regards to **claims 2 and 16**, the **combination of Downes, The New York Times, and Friedmans** fails to explicitly disclose a specific type of betting system further comprising:

providing, by the at least one processor, a spread quote comprising an upper index number and a lower index number;

wherein the first quote comprises the upper index number and the first bet comprises a bet that the total number of units earned by the participant will be greater than the upper index number; and

receiving, by the at least one processor, a second bet that the total number of units earned by the participant will be less than the lower index number.

However, **Official Notice** is taken that it is old and well known in the art of gambling that there are numerous types of betting methodologies, such as, but not limited to, point spread, over/under, spread betting, and etc. **Downes** discloses a method and system that allows a user to place bets on various types of sporting events and that the method and system allows for a variety of types of betting to take place. **Downes** further discloses that several users are able to log onto the system and that the same user can also place several bets at a time and keep track of the user's betting history. As a result, the Examiner asserts that it would have been well within the ability of one having ordinary skill to have incorporated spread betting into the system of **Downes** since the combination is only uniting old elements with no change in their respective functions and which would yield predictable results.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Downes** in view of **Official Notice** because this is a case where the improvements are no more than the predictable use of prior art elements according to their established functions.

27. In regards to **claims 29, 30, 52, and 53 , combination of Downes, The New York Times, and Friedmans** fails to disclose:

**(Claims 29 and 52)** wherein at least one third bet of the one or more third bets locks in a gain or loss associated with at least one corresponding first bet of the one or more first bets; and

**(Claims 30 and 53)** wherein at least one fourth bet of the one or more fourth bets locks in a gain or loss associated with at least one corresponding second bet of the one or more second bets.

However, **Official Notice** is taken that in the art of gambling it is old and well known to place multiple bets/wagers and that it is also old and well known for a gambler to cash out to prevent possible future losses or to secure current gains and that it is also old and well known in the art for later bets to be associated with early bets that were made. An example would be where a user is betting on a team to make it to the final four, but half way through the season the user's team has had considerable losses and would be unable to win overall. Another example would be if a user is in a casino and currently up by a considerable amount it is known for the user to cash out to secure current financial gains because the user feels they may lose on the next hand, but still continue playing after the hand has passed or move to a different table playing the

same game. In other words, it is old and well known for a later bets to be associated with at least a previous corresponding bet, wherein the later bets compound or build up from previous bets, i.e. the later bets can be gains or losses and can increase or decrease the results of previous bets, and by doing so the later bets result in locking in gains or losses of the previous bets which they, i.e. the later bets, depend from.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Downes** in view of **Official Notice** because this is a case where the improvements are no more than the predictable use of prior art elements according to their established functions. To put it another way, one of ordinary skill in the art of gambling would have found it obvious that multiple bets can be made during an event and that later bets can be associated and even depend off of previously made bets or even currently placed bets as a means of increasing the gambler's odds of winning, thereby locking in a gain or a loss.

***Response to Arguments***

28. Applicant's arguments filed **12/14/2009** have been fully considered but they are not persuasive.

**Rejection under 35 USC 101**

29. The rejection under 35 USC 101 is **withdrawn** due to amendments.

**Rejection under 35 USC 112, second paragraph**

30. Rejections under 35 USC 112, second paragraph, is **withdrawn**.

**Rejection under 35 USC 103**

31. Applicant's arguments with respect to **claims 1, 2, 15, 16, and 24 – 69** have been considered but are moot in view of the new ground(s) of rejection.

**Pertinent Arguments**

**Claims 2 and 16**

32. Regarding the traversal of the provided Official Notice the Examiner assert that a "traverse" is a denial of an opposing party's allegations of fact. The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a).

An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of

applicant's failure to adequately traverse official notice, the following are admitted prior art:

providing, by the at least one processor, a spread quote comprising an upper index number and a lower index number;

wherein the first quote comprises the upper index number and the first bet comprises a bet that the total number of units earned by the participant will be greater than the upper index number;

receiving, by the at least one processor, a second bet that the total number of units earned by the participant will be less than the lower index number.

#### ***Conclusion***

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found in the PTO-892 Notice of References Cited.

**Simon et al. (US PGPub 2003/0157976 A1); Cherry (US Patent 5,957,77; 6,120,376); Sweeny (US Patent 5,027,102)** - which are directed towards methods of gambling and their associated systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GERARDO ARAQUE JR whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 9:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gerardo Araque Jr./  
Primary Examiner, Art Unit 3689  
12/29/2011